IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3375 OF 2004

Mr.Virendra Singh A.Chandok ...Applicant

Versus

The State of Maharashtra & Ors. ...Respondents

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Mr.K.S.Patil i/b Swapnil Pednekar for Applicant.

Mr.K.V.Saste, A.P.P. for Respondent No.1.

Mr.Khan Abdul Wahab for Respondents 2 and 3.

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CORAM: A.M.KHANWILKAR, J.

SEPTEMBER 28, 2004.

P.C.

1. Heard Counsel for the parties. The present Application questions the correctness of order passed by the Metropolitan Magistrate, 10th Court dated July 9, 2004, enlarging the Respondents 2 and 3 on bail. According to the Applicant, the Applicant has registered offence with M.I.D.C. Police Station, Mumbai against the Respondents 2 and 3 under Sections 324, 326, 354 and 114 of the

Indian Penal Code. The grievance is that inspite of the fact that the allegation is one of offence committed under Section 326 of the Indian Penal Code, which is punishable by imprisonment for life, the concerned Magistrate has enlarged the Respondents 2 and 3 on bail by a cryptic order, which reads thus :

> "Perused Application and Say.
> Heard.
> Investigation required the accused in custody is over. Hence I enlarge the accused on their executing P.R.Bond of Rs.5,000/- with one Surety in the like amount."

2. It is the case of the Applicant that the concerned Magistrate had no jurisdiction to grant bail to Respondents 2 and 3 in the fact situation of the present case. It is further argued that assuming that the Magistrate could have entertained the Bail Application, it was obligatory on him to record a clear finding negativing the existence of reasonable ground for believing that such accused

is guilty of an offence punishable with sentence for life, as in the present case. Applicant has placed reliance on the medical certificate which indicates that amongst others, injury of composite fracture has been noted in respect of Thorax Lumbosacral Spine, which clearly qualifies the offence under Section 326 of the Indian Penal Code, punishable with imprisonment for life.

3. Learned Counsel has placed reliance on the decision of our High Court reported in **1996(2) Mh.L.J. 485 in the case of State of Maharashtra vs. Kaushar Yasin Qureshi & Anr.** to buttress this submission that the order as passed by the concerned Magistrate which is impugned in this Application cannot be sustained at all.

4. On the other hand, Counsel for the Respondents 2 and 3 submits that as the offence in question was not exclusively triable by Sessions Court, it was open to the Magistrate to grant bail to Respondents 2 and 3 inspite of the nature of offence alleged against them. To support this contention, reliance is placed on the decision of

the Apex Court reported in **2001 All.M.R. (Cri.) 739 in the case of Prahlad Singh Bhati vs. N.C.T., Delhi**, in particular, exposition in Paragraphs 7 and 11 of the said decision. In other words, according to the Respondents 2 and 3, the concerned Magistrate was competent to grant bail to the said Respondents and he has exercised jurisdiction rightly, being satisfied that the custody of accused was no longer required for investigation.

5. Having considered the rival submissions, I have no hesitation in accepting the submission canvassed on behalf of the Applicant that the Magistrate could not have granted bail to the Respondents 2 and 3, on the reasoning stated in the impugned order. The Applicant has rightly relied on the decision of our High Court in the case of **State of Maharashtra vs. Kaushar Yasin Qureshi & Anr. (Supra)** which supports the argument canvassed before me. Indeed, the Apex Court has observed in Para 7 of the decision in **Prahlad Singh Bhati (Supra)** that generally speaking, if punishment prescribed is for imprisonment for life, and death penalty and the offence is exclusively triable by

the Court of Sessions, Magistrate has no jurisdiction to grant bail, unless the matter is covered by the provisos attached to Section 437 of the Code. However, Counsel for Respondents 2 and 3 has overlooked the legal position stated by the Apex Court in Para 5 of the same decision, while construing Section 437 of the Code. It is observed that under Section 437 of the Code, when a person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in-charge of a Police Station or appears or is brought before a Court, he may be released on bail by a Court other than the High Court and Sessions, subject to the conditions that he does not reasonably appear to have been guilty of an offence punishable with death or imprisonment of life. In Paragraph 6, the Apex Court has further observed that the Magistrate has to specifically negativate the existence of reasonable ground for believing that such accused is guilty of an offence punishable with the sentence of death or imprisonment for life. It is only then the Magistrate can be said to have legitimately exercised jurisdiction as is

permissible by Section 437 of the Code.

6. In the present case, the order as passed by the concerned Magistrate is reproduced in its entirety. There is absolutely no adjudication, so as to either negativate or to uphold the reasonable ground to hold that the accused is guilty of an offence or otherwise. All that the Magistrate has observed is that the custody of the accused was not necessary for investigation. That is no reason to assume jurisdiction, so as to release the accused on bail in respect of offence which is punishable with imprisonment for life, as in this case, under Section 326 of the Indian Penal Code. If it is so, the order passed by the Magistrate, which is impugned in this Application is obviously without jurisdiction. Hence, this Application should succeed and the impugned order requires to be set-aside.

7. The Respondents 2 and 3 shall surrender before the concerned Magistrate on 4th October 2004.

8. If the Respondents 2 and 3 make fresh application for bail, the same be considered in accordance with law by the appropriate Court on its own merits, uninfluenced by the present decision.

9. Application disposed of accordingly.

10. All concerned to act on the ordinary copy of this order, duly authenticated as true copy by the Office.

A.M.KHANWILKAR, J.